

SPECIAL CRIMINAL APPLICATION No 1101 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 = No
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GUJARAT STEEL TUBES LIMITED

Versus

LLOYD STEEL INDUSTRIES LIMITED

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Appearance:

Mr. Mihir Thakor, Senior Advocate, with  
MS MEGHA JANI for Petitioners  
MR UNMESH D SHUKLA for Respondent No. 1  
Mr. K.P. Rawal, APP, for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 06/05/98

ORAL JUDGEMENT

The petitioners, by filing this group of petitions under Articles 226 and 227 of the Constitution of India, read with section 482 of the Code of Criminal Procedure, 1973 ('Code' for short), have prayed to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the complaints filed by respondent No.1, Lloyd Steel Industries Limited, before the learned Metropolitan Magistrate, Court No.9, at Ahmedabad, which are registered as Criminal Case No.

3660 of 1997 and the process issued against the petitioners for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short), for dishonour of the cheque, bearing No.89960, dated May 25, 1997, for Rs.2,39,572.50 ps. issued to respondent NO.1, by petitioner no.1-company.

It is averred by the petitioners that, against the aforesaid goods supplied to the petitioner-company by respondent No.1, a post-dated cheque was given to respondent no.1 in the first week of March 1997 drawn on the Bank of Baroda, Ashram Road Branch, Ahmedabad, dated May 25, 1997, bearing No.89960 for Rs.2,39,572.50. It is averred that the manufacturing activities of petitioner No.1-company came to a grinding halt in the month of April 1997 and faced with that situation, petitioners addressed a letter to respondent No.1 on May 1, 1997 requesting respondent No.1 that, in view of the financial crunch, the said post-dated cheque given to respondent No.1 should not be deposited. It is further averred that the said notice was sent by various modes, viz., registered post A.D., hand delivery, courier service, which was not accepted by respondent No.1. The petitioners also sent the said letter through FAX to respondent No.1 from the office of petitioner No.1-company. Despite this specific intimation, respondent No.1 deposited the cheque and sent for clearance to the Bank of Baroda, which returned with endorsement "payment stopped by the drawer". It is averred that on June 6, 1997, a notice was given on behalf of respondent No.1 to petitioner No.1-company under Section 138(b) of the Act, which was replied to by petitioner No.1-company on June 18, 1997. As no payment was made in spite of receipt of statutory notice by the petitioners, criminal complaint came to be filed before the Metropolitan Magistrate, Court No.9, Ahmedabad, against the petitioners for the offences punishable under Section 138 of the Act. The learned Metropolitan Magistrate, Court no.9, Ahmedabad, after due verification of the complaint, issued process against the petitioners for the offences punishable under Section 138 of the Act.

On identical fact-situation, the learned Metropolitan Magistrate, Court No.9, Ahmedabad, has issued process against the petitioners in other Criminal Cases which are subject matter of challenge in Special Criminal Applications Nos. 978 of 1997 1015 of 1997 to 1028 of 1997.

The points, which are raised in the present petition, have been dealt with in the group of Special

Criminal Applications Nos. 978 of 1997 1015 of 1997 to 1028 of 1997 filed by the very petitioners, which came to be dismissed by a C.A.V. Judgment of this Court on May 1, 1998.

For the reasons stated in the C.A.V. Judgment dated May 1, 1998, rendered in the group of Special Criminal Applications Nos. 978 of 1997, 1015 of 1997 to 1028 of 1997, this Special Criminal Application is also required to be rejected. Hence, this application is rejected. Rule is discharged. Interim relief is vacated.

Since the interim relief is extended upto August 1, 1998, in the group of Special Criminal Applications Nos. 978 of 1997, 1015 of 1997 to 1028 of 1997, pursuant to the request made by the learned advocate for the petitioners, the interim relief, which was granted earlier in the present application i.e., Special Criminal Application No.1101 of 1997, is also extended upto August 1, 1998.

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(swamy)